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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,295	12/31/2003	Mark E. Paige	70047-43	9785
5179	7590	01/24/2006	EXAMINER	
PEACOCK MYERS, P.C. 201 THIRD STREET, N.W. SUITE 1340 ALBUQUERQUE, NM 87102			EVANS, FANNIE L	
		ART UNIT	PAPER NUMBER	
			2877	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/749,295	PAIGE ET AL.	
	Examiner	Art Unit	
	F. L. Evans	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 1-5 and 12-20 is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) 6-11 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 December 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>0604</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 13-18 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Berssen et al (US 5,386,287).

Berssen et al disclose an absorption spectroscopy apparatus comprising a container holder (1); a drive (2) rotating said container holder (1); means (5) for, while rotating said container, directing a beam of electromagnetic radiation through said container (1), said beam comprising one or more wavelengths selected from the group consisting of visible wavelengths, infrared wavelengths, and ultraviolet wavelengths (column 2, lines 62-64); and means (6) for receiving said beam upon passage through said container. The container holder (1) is a bottle. The apparatus inherently has means for stopping the drive (2) since the drive is not constantly running/operating. The signals from the receiving means (6) are averaged (column 2, lines 44-49). The apparatus of Berssen et al performs the method of claims 1-5. Applicant's attention is directed to Berssen et al in its entirety.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under

35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Berssen et al (US 5,386,287) in view of Tiefenthaler (WO 02/12865 A1).

Berssen et al disclose an absorption spectroscopy apparatus having essentially every feature set forth in the claims except the use of a diode laser as the directing means. See the discussion of Berssen et al above. Instead of a diode laser the directing means of Berssen et al comprise a monochromator or filter (column 2, lines 25-33). The monochromator and filter are a part of a tunable light source.

In lines 18-27 on page 29, Tiefenthaler teach the alternative use of a diode laser and a monochromator as a tunable light source.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art that a diode laser could have been used in the apparatus of Berssen et al instead of the monochromator. The use of such a diode laser would have involved the mere substitution of functional equivalents, as evidenced by the disclosure of Tiefenthaler.

The Information Disclosure Statement

The prior art cited in the information disclosure statement filed on June 1, 2004 has been considered.

Additional Prior Art

In the paragraph bridging columns 15 and 16, Carson et al (US 5,416,075) teach the use of

rotating cuvettes in an absorption spectroscopy method.

Masanori et al (JP 7-055697 A1) disclose a spectrophotometer with a rotating sample cell. A computer translation, in the English language< accompanies Masanori et al (JP 7-055697 A1).

Tiefenthaler (US 6,785,433 B2) is an English language version of Tiefenthaler (WO 02/12865 A1), applied in the rejection of claims 19 and 20, above. Applicant's attention is directed to lines 19-32 in column 19 of Tiefenthaler (US 6,785,433 B2).

Allowable Subject Matter

Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if claim 6 and 9 were rewritten in independent form including all of the limitations of the base claim and any intervening claims.

As to claim 6, the prior art of record, taken alone or in combination, fails to disclose or render obvious an absorption spectroscopy method comprising the step of rotating the container in a plurality of directions, in combination with the rest of the limitations of the claim.

As to claim 9, the prior art of record, taken alone or in combination, fails to disclose or render obvious an absorption spectroscopy method comprising the step of determining a region of the container through which desired beam characteristic are optimized., in combination with the rest of the limitations of the claim.

Fax/Telephone Numbers

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (571) 272-2414.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext 77. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see [http://pair-](http://pair)

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direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



F. L. EVANS
PRIMARY EXAMINER
ART UNIT 2877

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January 21, 2006